

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Stephen A. FODOR *et al.*

Confirmation No. 3654

Application No.: 10/694,541

Group Art Unit: 1634

Filed: October 28, 2003

Examiner: Jeanine A. Goldberg

For: Arrays for Detecting Nucleic Acids

Commissioner for Patents
U.S. Patent and Trademark Office
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Randolph Building
401 Dulany Street
Alexandria, VA 22314

Miscellaneous Communication

Applicants wish to bring to the Examiner's attention the following Requests for *Ex Parte* Reexamination filed by Illumina, Inc. against United States Patents assigned to Affymetrix, Inc.:

United States Patent Assigned to Affymetrix, Inc.	Issue Date	Date Request for Reexamination Filed
6,646,243	November 11, 2003	October 19, 2007
6,355,432	March 12, 2002	October 19, 2007
6,399,365	June 4, 2002	October 19, 2007
5,795,716	August 19, 1998	October 19, 2007
5,545,531	August 13, 1996	October 19, 2007

Applicants respectfully note that one or more of the claims of U.S. Patent Nos. 6,646,243 and 6,355,432 are related to the claims of the present application in that they refer to beads upon which nucleic acids are attached. Applicants are in the process of reviewing the documents cited in the Requests for *Ex Parte* Reexamination and will provide the Examiner with a Supplemental Information Disclosure Statement for any cited documents that arguably fall within the disclosure criteria set forth by the Examiner in the Request under 37 C.F.R. § 1.105 dated July 24, 2007.

Upon a preliminary inspection of the Requests, Applicants note that the following four references were cited by Illumina as alleged prior art:

1. The book of abstracts by Dr. Radomir Crvenjakov, Radoje Drmanac and others that was published as part of "The DOE/NIH Human Genome Contractor/Grantee Workshop" on November 3-4, 1989 in Santa Fe, NM ("Drmanac Abstract Book"); published November 3, 1989
2. The poster to supplement the Drmanac Abstract Book presented by Drs. Crvenjakov and Drmanac at "The DOE/NIH Human Genome Contractor/Grantee Workshop" on November 3-4, 1989 ("Drmanac Poster")
3. European Patent EP 0 392 546 (Drmanac EP Publication); published October 17, 1990
4. "Prospects for a Miniaturized, Simplified and Frugal Human Genome Project" by Drs. Crvenjakov and Drmanac ("Drmanac Article"); published January 23, 1991

Applicants note that the "Drmanac Abstract Book" was cited as Document #36 in the 1449 form filed in the present application on August 9, 2007 in response to a Request Under 37 C.F.R. § 1.105. An abstract on page 37 of the "Drmanac Abstract Book" was also filed as Document #64 in the Information Disclosure Statement filed June 12, 2006 and considered by the Examiner on August 16, 2006.

The "Drmanac Poster" was previously cited to the Office as Document #65 in an Information Disclosure Statement filed June 12, 2006 and considered by the Examiner on August 16, 2006. Applicants respectfully note that a publication date was not provided for Document #65 in the Information Disclosure Statement because the date of publication was unknown. The presentation was inadvertently resubmitted to the Office as Document #41 in a 1449 form filed August 9, 2007 in response to a Request under 37 C.F.R. § 1.105. However, the second citation to the Office did not include the location where the poster was presented or a precise date. To insure that this reference is properly considered by the Examiner, an Information Disclosure Statement is provided herewith for consideration.

The Drmanac EP Publication was cited as Document #27 in an Information Disclosure Statement filed September 28, 2004 and considered by the Examiner on November 5, 2004.

The Drmanac Article was cited as Document #311 in an Information Disclosure Statement filed June 20, 2007. In response to the Information Disclosure Statement, the Examiner issued a Request under 37 C.F.R. § 1.105 requiring Applicants to identify references describing “at least 100 beads wherein each of the at least 100 beads comprises a unique species of nucleic acid attached thereto.” Due to an inadvertent error, the reference was not identified by Applicants in the Response to the Request filed August 9, 2007. However, what appear to be drafts of the article were submitted and cited as Documents 39 and 40. To insure that this reference is properly considered by the Examiner, an Information Disclosure Statement is provided herewith for consideration.

REMARKS

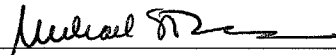
Except for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-1283. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Dated: November 8, 2007

Respectfully submitted,
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